UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1139
13 April 1992

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1139th MEETING

Held at Headquarters, New York,
on Friday, 3 April 1992, at 3 p.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Colombia (continued)

Draft general comment relating to article 7 of the Covenant

This record is subject to correction.

Corrections to this record should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Colombia (continued) (CCPR/C/64/Add.3)

1. At the invitation of the Chairman, Mr. Cepeda and Mr. Melo (Colombia) took places at the Committee table.

2. The CHAIRMAN said that the Colombian delegation would answer questions held over from sections V and VI of the list of issues.

3. Mr. SERRANO CALDERA asked for more information concerning the special jurisdictions under which ethnic minorities were authorized to apply their own norms, provided that those norms did not conflict with constitutional principles, and in what specific cases such departures from general legal norms occurred.

4. Regarding ownership of indigenous property which was protected by the Constitution, particularly in the Amazon region, he wondered if it was held on a communal basis or owned by individuals. He also wished to know whether the indigenous population was entitled to permanent parliamentary representation as an ethnic group and whether the special provisions on behalf of indigenous minors formed part of the Minors' Code or were contained in separate legislation.

5. Turning to the situation of minors in the population as a whole, he asked what provision had been made for sanctioning parents and others who mistreated minors and, in the light of the very high figures for juvenile employment, whether action was being taken to enforce the right of young people to education.

6. Mr. PRADO VALLEJO asked whether Colombia had been confronted with the problem of fraudulent adoption of minors by foreign couples and whether there had been any instance of children being abducted with a view to selling their organs on the international market.

7. He welcomed the decision to promote participatory democracy through the introduction of machinery for popular consultations and wondered how successful that initiative had been in practical terms. The Committee would appreciate additional information regarding the procedures, mentioned in paragraph 213 of the report, whereby indigenous minorities elected their own authorities and decided on their own development models.

8. It would also be interesting to hear whether Colombia had encountered any difficulties in reconciling development of its oil reserves with the maintenance of a balanced ecosystem.

9. Mr. ANDO inquired about the legal status of married women in Colombia in matters relating to matrimonial property, and whether there was any evidence of conflict between the policy of granting a large measure of autonomy to indigenous populations and efforts to guarantee equal rights for women.

10. Mr. WENNERGREN wished to know what kind of strategy had been adopted to deal with the problem of street children.

11. Mr. CEPEDA (Colombia) said that while Colombia's black community was not protected to the same extent as the indigenous population, the provision under article 63 of the Constitution regarding the inalienability of the communal lands of ethnic groups afforded protection for members of the black community living in areas of communal land ownership.

12. Article 246 of the Constitution merely established a general principle concerning special jurisdictions for the indigenous population, the legislative details of which had yet to be worked out. The scope of the jurisdictions would be analysed in consultation with the Commission on Indigenous Policy and members of the communities concerned. As an example of the areas to be covered, he mentioned that certain offences under the country's penal code were not considered reprehensible in indigenous communities owing to differences in culture or tradition.

13. Property in the Amazon region was owned by the community and not by individuals. There were two indigenous representatives in the Chamber of Representatives and two in the Senate elected by the special constituency.

14. With regard to the move from formal to participatory democracy, many of the instruments designed for that purpose were recent and had not yet been used.

15. Women in Colombia had equal status with men under the law. In the case of the indigenous community, customs were respected but no discrimination was allowed on grounds of sex. There had as yet been no specific instances of conflict.

16. Mr. MELO (Colombia) said that care was taken, in the case of indigenous minors, to avoid undue legal encroachment on traditions. Their special circumstances were taken into account provided that those circumstances were not in conflict with the law. Adoption was permissible only if indigenous minors were abandoned outside their communities and the Indigenous Affairs Division of the Ministry of Government had to be consulted in all cases.

17. The Minors' Code laid down procedures for dealing with cases of minors ill-treated by their parents or guardians, with graded punishments depending on the seriousness of the offence.

(Mr. Melo, Colombia)

18. Adoption was carefully regulated in the Code in the light of many years' experience of fraudulent adoption by foreigners. Adoption was permissible only if a child had been declared abandoned by a magistrate or if his or her parents had given their consent. The Institute of Family Well-Being had to be consulted in all cases and its approval was required for all foreign adoptions.

19. Rigorous investigations had been conducted into reports of trafficking in children's organs but not a single victim or confirmed case had been found.

20. He said that affirmative action on behalf of children was based on a policy of guaranteeing access to education so that there would be less incentive to send children out to work at an early age. He quoted figures to show how educational coverage was being extended at every level in a concerted effort to achieve education for all.

21. During the 1960s, a time of heavy migration, street children had been a serious problem, but better living conditions and lower birth rates had helped to alleviate the situation. In recent years such children were mostly children who had run away because of ill-treatment or conflict at home. The authorities concluded contracts with charitable and non-governmental organizations, which arranged for adoption or admission on a voluntary basis to institutions that provided educational and training facilities.

22. With regard to the protection of indigenous peoples, he noted that their reserves were registered with the Government by their respective local councils (cabildos), which were generally elected by popular vote. The national authorities did not interfere in those elections, and within their territory the local councils were the administering authorities.

23. Development models had been created for the indigenous peoples, although there was still a need to coordinate them with national development models. For budgetary purposes indigenous communities were treated as municipalities and received appropriations from the national budget.

24. Indigenous peoples were entitled to be consulted on any investment in development of subsoil resources within their reserves, although the resources themselves were the property of the State. The aim was to achieve sustainable development, and it was up to the indigenous people themselves to determine how far they wished to be integrated into the national economy.

25. Generally, oil wells were near the coast rather than in the jungle; none the less, they did pose some environmental problems, primarily because of spills from the pipelines, which sometimes threatened groundwater supplies. Some spills had been caused by terrorist attacks and had, in turn, led to environmental protests.

26. Mr. MAVROMMATIS said that he was glad to hear that the Government took into consideration the traditional laws and customs of indigenous peoples. He wondered, however, whether it could ensure that no rights guaranteed under the Covenant were violated, even when such violation was dictated by aboriginal culture.

27. Mr. MELO (Colombia) replied that the issue was a very complex one. The Government sought to accommodate cultural differences to the extent that traditional practices did not conflict with the rights of the Covenant. That meant that the autonomy of native communities took precedence over administrative considerations but not over fundamental rights: refusal of treatment for a sick child would be considered a violation of fundamental rights.

28. Mr. PRADO VALLEJO said that the delegation had provided a clear and complete picture of human rights in Colombia. The Government had introduced positive reforms and the dialogue with the Committee had also been positive. The Committee had noted certain problems, but had also seen that important progress had been made.

29. All members of the Committee had expressed concern regarding continuing human rights violations, primarily by paramilitary groups, some of which had links to the armed forces. The Government was very aware of the problem and had made great efforts to stem the violence.

30. The Committee wished to accentuate the positive aspects of the situation in Colombia and hoped that the Government's efforts would be successful and that the rule of law would prevail.

31. Mr. EL-SHAFEI said that the report and the delegation's answers to the Committee's questions had shown that the Government was making a genuine effort to enforce human rights and to strengthen institutions for their defence.

32. Given the continuing violence it was difficult to make a valid assessment of the situation; however, the Committee was concerned that the conflict had led the Government to commit serious abuses, that crimes often went unpunished because of inadequate investigation and the ineffectiveness of the judicial system, and that the civilian Government seemed unable to take appropriate action to put an end to the situation.

33. The question of impunity was at the centre of Colombia's feeling of insecurity and terror and must be eliminated. Members of the police and armed forces who tolerated or promoted paramilitary activity must be discharged and a concerted effort must be made to dismantle paramilitary groups and punish human rights violators. In countering the actions of paramilitary groups the Government must refrain from adopting the tactics used by them, and confine itself to lawful policies and actions. He hoped that the dialogue between the Committee and the delegation would prove useful and that the delegation would convey to the Government the sense of the current deliberations.

34. Mr. FODOR welcomed the positive process undertaken by Colombia over the previous few months, and the constructive approach adopted by the extremely competent delegation. Colombia had until recently been a major human rights violator and one of the most violent countries in the world, where massacres, disappearances, torture and arbitrary arrests were common occurrences. They had not been totally eliminated, although terrorism by the drug lords had decreased considerably over the previous year.

35. Recent Government efforts, including the adoption of a new Constitution, had brought significant advances in the enforcement of human rights. However, the police and armed forces in some cases appeared able to violate human rights with impunity. He was confident the situation would continue to improve.

36. Miss CHANET said that the delegation had been very well prepared and quite frank with the Committee. It was clear that Colombia was intent on fighting human rights violations; it was equally clear that the task facing the country was immense. Torture, executions and disappearances still continued, but commendable efforts were being made to eliminate them and more than 300 individuals suspected of excesses had been punished or discharged. With regard to the remedy of tutela, it was too soon to judge whether it would be effective in guaranteeing individual liberty.

37. The number of homicides - summary executions and the so-called clean-ups - was still intolerably high and police and military personnel appeared still to act with impunity. The treatment of working children also remained a major concern. The right of every child to protection guaranteed by article 24 of the Covenant was at odds with the employment of children of 12 to 14, however limited and regulated it might be.

38. She recommended that the Government of Colombia should take into account the views of the members of the Committee on the need to adapt its emergency measures legislation to article 4 of the Covenant, whose provisions on the circumstances in which states of emergency could be declared should be incorporated in the law. Proportionality should be observed and the rights that might be derogated from, as well as the non-derogable rights, should be specified.

39. In summary, Colombia was tackling its problems head-on and attempting to modernize the country and its institutions so as to combat the evils now afflicting it.

40. Mr. MAVROMMATIS said that the delegation had conducted a very satisfactory dialogue with the Committee and had demonstrated that the Government was making a real effort to face its problems. The Government had powerful new weapons at its disposal in the form of the new Constitution and application of the concept of amnesty. The problems that existed were evidently being tackled, and he looked forward to further progress in the near future.

41. Mr. SERRANO CALDERA said that the delegation's replies to the points raised by the Committee underscored the seriousness of the Government's attitude towards the protection of human rights. While human rights violations were inevitable, given the continuing climate of violence which was attributable essentially to political issues and to the great power wielded by the drug traffickers, it was clear that progress was being made.

42. Colombia was one of the few countries in Latin America that was endeavouring to adjust the legal system to reflect economic and social realities while others continued trying to graft unsuitable models on to quasi-feudal societies. The new Constitution, the culmination of a series of carefully orchestrated economic, social, political and legal measures, was the result of a purely internal process.

43. Colombia must continue to follow the path of social and political consensus, and must focus on guarantees for human rights and protection against the abuse of military power. By continuing along that road, Colombia would set an example for Latin America as a whole.

44. Mr. ANDO welcomed the Government's long-term commitment to human rights. Human rights violations in Colombia occurred largely as a result of activity by guerrillas and drug traffickers. There were, in addition, inequalities, especially where indigenous rights, children's rights and sexual equality were concerned. The problem of drug trafficking had an international dimension, and the international community should be prepared to lend assistance. Human rights violations would continue until the economic and social structure of Colombian society was reformed. While that would necessarily be a long-term process, it was essential.

45. Mrs. HIGGINS said that the third periodic report of Colombia contained the information the Committee needed. In particular, it provided details of the new constitutional arrangements. Moreover, the delegation had provided excellent answers and evidenced a positive attitude towards human rights.

46. While problems still remained, Colombia was certainly making progress. Initiatives had been taken in every area of concern to the Committee, including guarantees of a fair trial and efforts to bring the military under civilian control. She urged the Government not to overlook case law, which was of such importance at an individual level, and formed an essential part of the Government's relationship with the Committee.

47. Mr. DIMITRIJEVIĆ said that all countries had specific difficulties that outsiders did not always fully appreciate. Colombia faced the singular difficulty of a powerful group of drug traffickers whose means rivalled or even surpassed those of the Government itself. Given the international dimension of the problem, international support was appropriate.

(Mr. Dimitrijević)

48. In addition, politically motivated violence had been a fact of life in Colombia for some time, and it was unlikely that it could be eliminated overnight. The adoption of the new Constitution, based on a broader political spectrum, was a very positive development in that connection.

49. The third main problem faced by the country was the influence of the military. The Government had perhaps relied too heavily on the military in the past and should start to review the whole strategy of combating violence with violence. It might try instead to rely more on social and political reform in an endeavour to tackle the roots of the problem. Colombia now faced "social clean-up" activities by paramilitary groups, claiming to defend the existing order. Those groups sought to eliminate "undesirables", such as street children and the economically disadvantaged. On a positive note, Colombia had found an original means of promoting consensus through the adoption of the new Constitution. The Committee looked forward to further positive developments.

50. Mr. WENNERGREN said that the situation in Colombia had improved markedly and the new Constitution represented a remarkable breakthrough. The system of participatory democracy that Colombia was establishing was particularly praiseworthy, and would further stimulate the country. The functions newly assigned to the Office of the Attorney-General represented a very positive development. The biggest remaining difficulty was that of military jurisdiction in certain instances and official immunity. The less Colombia relied on military courts, the better the outcome would be.

51. The CHAIRMAN said that he was grateful to the Colombian Government for sending representatives with such special competence in the field of human rights. They had given exhaustive and precise answers to all questions raised by the Committee, and in a frank and open dialogue had dealt constructively with the relevant laws, events and facts, without masking the very serious situation in the country. In so doing they had reflected their Government's admirable attitude towards the protection of human rights. Despite the enduring problems, he shared his colleagues' optimism that the Government had now gained control of the situation.

52. Mr. MELO (Colombia) said that he generally agreed with the Committee's analysis of his country's basic problems, and its view that the central issue remained the impunity of criminals. Once the Government succeeded in eliminating that, the final blow would have been dealt to the paramilitary groups, and the drug traffickers could be held within the normal limits of criminality to be found in other countries. The Committee could be sure that all forthcoming legislation would also fully respect the norms of the Covenant as mandated by Colombia's Constitution, and that any new legislation would be tested immediately in the courts by its citizens as a second step in institutional consolidation. His Government would carefully scrutinize the points members had raised, and would review its legislation in that regard. One area requiring attention would certainly be the remnants of the military penal justice system; thus far the Government had been unable, due to

(Mr. Melo, Colombia)

political considerations, to impose stricter controls in that area. It was currently considering a series of institutional and social policies that would make for a greater political openness and a culture of tolerance conducive to the peaceful resolution of internal conflicts. Politics was often defined as the art of the possible. He hoped that his Government's determined efforts to gain control of the situation would make politics in his country the art of attaining the impossible.

53. The CHAIRMAN thanked the Colombian delegation and said that Colombia's fourth periodic report would be due in 1995.

54. Mr. Melo and Mr. Cepeda withdrew.

The meeting was suspended at 5.30 p.m. and resumed at 5.40 p.m.

Draft general comment relating to article 7 of the Covenant (future CCPR/C/21/Rev.1/Add.3)

55. The CHAIRMAN drew attention to the informal document containing the draft general comment relating to article 7 of the Covenant, which would replace its earlier draft general comment No. 7 (16).

56. He recalled that the Committee had decided at its 1124th meeting, during the discussion of the draft general comment on article 10, that the following sentence should be added to paragraph 11 of the draft general comment on article 7: "In this connection, the State party should see to it that places of detention do not contain equipment liable to be used for ill-treatment or torture." He suggested that the sentence should be inserted before the penultimate sentence of that paragraph, and would take it that paragraph 11, as amended, was adopted.

57. It was so decided.

58. Mrs. HIGGINS, with reference to paragaraph 15 of the draft general comment, drew the Committee's attention to her correspondence with a non-governmental organization, the International League for Human Rights, which had suggested that the current wording of paragraph 15 gave the impression that, so long as amnesties in respect of acts of torture did not interfere with the victim's right to an effective remedy, the Committee favoured the adoption of such amnesties.

59. Since that was not the Committee's intention and was not in line with its past jurisprudence, she suggested that paragraph 15 should be amended to read:

> "The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties that prevent investigation and punishment of acts of torture are generally incompatible with the duty of States to protect persons within their jurisdiction from torture. In

(Mrs. Higgins)

addition, States may not adopt measures that deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.".

60. Mr. DIMITRIJEVIĆ observed that States had a duty not merely to protect against such acts but to ensure that they did not occur in the future; he would add a clause to that effect at the end of the second sentence in order to reflect the Committee's past jurisprudence.

61. Miss CHANET said that she agreed that the last sentence of the paragraph should be reworded to avoid giving the wrong impression, but pointed out that it was the very nature of an amnesty to prevent punishment and that, moreover, the right to declare amnesties was established in the constitutions of many States, including her own. In order not to come into conflict with such constitutional laws or with the definition of amnesty, she suggested using less specific wording that did not allude to preventing punishment.

62. Mr. MAVROMMATIS said that he agreed with Miss Chanet, and that amnesties could be a very healing and useful tool.

63. Mr. HERNDL said that although he could accept the addition of a definition of amnesty as preventing investigation and punishment, he doubted whether any of paragraph 15 needed amendment, except to correct the impression given in the last sentence.

64. Mrs. HIGGINS suggested the following further revisions: the second sentence of paragraph 15 should read: "Amnesties that prevent investigation of acts of torture are generally incompatible with the duty of States to guarantee freedom from such acts within their jurisdiction and to ensure that they do not occur in the future." The third sentence should read: "States may not deprive individuals of the right to an effective remedy," etc.

65. The CHAIRMAN said that he would take it, if he heard no objection, that the Committee wished to amend paragraph 15 as just proposed by Mrs. Higgins, and that it wished to adopt the draft general comment relating to article 7 of the Covenant, as a whole and as amended.

66. It was so decided.

The meeting rose at 6.10 p.m.